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November 28, 2012

VIA EMAIL [COMMENTLETTERS@WATERBOARDS.CA.GOV]



Ms. Jeanine Townsend
Clerk to the Board
STATE WATER RESOURCES CONTROL BOARD
1001 "I" Street, 24th Floor
Sacramento, California 95812-0100

Re: West Valley Water District Comments Regarding the: Perchlorate Contamination at the 160-Acre Site in the Rialto/Colton Basin and the Notice of Proposed Resolution Authorizing Entry into Settlement Agreements and Request for Comments

To the Clerk of the Board and State Water Board:

This firm represents the West Valley Water District (hereafter the "District") in all matters pertaining to the perchlorate contamination that has been and continues to impact the Rialto and Colton Groundwater Basin (the "Rialto/Colton Basin"). The District hereby submits the below comments in response to the State Water Resources Control Board's ("State Board") consideration of the Proposed Administrative Settlement Agreement with a number of potentially responsible parties (the "State Board Settlement"). The District's comments include: (1) an executive summary; (2) a brief background of the District's role in these matters; and (3) more detailed comments concerning the State Board Settlement and proposed future investigation and treatment of the contaminants impacting the Rialto/Colton Basin.

A. EXECUTIVE SUMMARY

The District fully supports a resolution of the many legal proceedings surrounding the contamination that has impacted the Basin. The Proposed State Board Settlement between the State Board and certain PRPs is a positive step that will move all parties closer to the implementation of a remedy for the Rialto/Colton Basin.

However, the District also believes that this settlement does not yet, but should include a serious review of all critical components that will allow a remedy to be implemented in a timely and effective manner (and without unnecessary delays). One key component to the implementation of a remedy for the Rialto/Colton Basin is a clear understanding on how water

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rights have been allocated by binding contract for the implementation of the United States' Environmental Protection Agency's Interim Action Record of Decision, EPA ID CAN000905945 [for the B.F. Goodrich Superfund Site] (hereafter the "US EPA ROD") and how that legally binding allocation impacts all settlements and aspects of the remedy.

The State Board is the lead state agency overseeing the protection of drinking water in the Rialto/Colton Basin. The State Board protects all parties in this region, including all parties that have never been litigants to this action. The State Board must ensure that when it makes a final decision to approve the State Board Settlement, it has conducted the necessary review to ensure that there will be a timely and efficient implementation of a remedy.

Having said this, it is important to point out that the State Board Settlement does not address what water rights have been or will be allocated for the implementation of the US EPA ROD. Although the settlement does not directly address this issue, the District believes that the State Board is in a position to request and seek clarification on this important topic. If the water rights issue remains unresolved after these settlements are finalized and executed, there is a strong possibility that the implementation of the remedy will be severely delayed and it is even possible that the settlement agreements, including the State Board Settlement, will fail to achieve closure on this issue.

The District respectfully requests that the State Board review this issue closely prior to making any decisions on the State Board Settlement. The District stands by ready to provide any information or documents that may be necessary to assist in this review.

B. THE DISTRICT'S ROLE IN THE PERCHLORATE-RELATED MATTERS

The District is a public agency with an elected board of directors, established in 1962. The District serves the drinking water needs of half the residents of the City of Rialto ("Rialto") and also serves residents and businesses in adjoining areas. The District is the largest holder of water rights in the Rialto/Colton Basin.

Over the years, in response to this perchlorate pollution crisis, many legal proceedings have been filed with the State Board and in federal court and State Superior Court. It is important to note that the District did not participate in these costly and time-consuming proceedings. Instead, consistent with its mission to protect water quality in the Basin, the District used its limited public resources to acquire grants, pioneer perchlorate treatment technology, and install groundwater treatment systems to clean the region's drinking water.

Since the perchlorate contamination was first detected in its drinking water wells, the District has constructed four Ion Exchange treatment systems. A fifth treatment system is on standby. The District has also designed and is constructing one biological groundwater treatment

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system. Beyond the five treatment systems that are online, standby and being constructed by the District, the District has, at its own cost, developed preliminary plans and options to act as the work party to design, construct and operate the pending United States Environmental Protection Agency ("US EPA") Interim Remedial Action, both using Ion Exchange and GAC treatment, or by expanding its biological groundwater treatment system.

The District believes that by avoiding costly litigation, and focusing its time, energy and resources on remediation of the Rialto/Colton Basin, it has been and will continue to be uniquely positioned with all necessary infrastructure, pipelines, land and – most importantly – water rights, to work with all necessary parties, including the participating responsible parties, the US EPA, the Regional Board and the State Board to immediately begin implementation of a basin-wide remediation project.

C. **THE STATE BOARD SHOULD CONSIDER THE WATER RIGHTS ALLOCATED BY CONTRACT FOR THE INTERIM AND FINAL REMEDY BEFORE MAKING A FINAL DECISION ON THE PROPOSED SETTLEMENT AGREEMENT**

The Proposed State Board Settlement Agreement is purportedly intended to resolve actions involving the State Board and the Santa Ana Regional Water Quality Control Board ("Regional Board") that pertain to the perchlorate contamination in the Rialto/Colton Basin. The District fully supports the State Board's and the Regional Board's efforts to resolve the litigation and administrative proceedings and move forward with the implementation of the interim and final remedy. However, the District believes that the State Board should conduct a careful review of the water rights issue as it relates to these various settlement agreements, including the State Board Settlement.

Although available water rights for the US EPA ROD are not addressed directly in the Proposed State Board Settlement Agreement, the issue is of significant importance to the State Board. Put simply, if there are not sufficient water rights allocated by contract for the implementation of the interim and final remedy, then the consent decree that enforces the cleanup of the Rialto/Colton Basin could be terminated. If such an event happens – and it is not unlikely given the history of some of the parties to these proceedings – the region could face many additional years of delay and uncertainty.

The State Board is now in a position to review the water rights issue, and seek additional clarification on how the parties, including the US EPA, intend to address this issue if a proper allocation of water rights is not made. As the key California oversight agency for this region, it is incumbent on the State Board to carefully review this issue as it will have impacts on the region for years to come. The State Board needs to consider the interests of not just the litigants and 'interested parties' in this matter, but also the non-litigants, which include the non-litigating

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water agencies such as the District and the thousands of residents in this affected region, many of whom are blue collar families and small businesses that do not have the power or resources to represent themselves in these hearings. The District believes the State Board can act as an Ombudsman and require clarification of this issue for the benefit of the entire region.

In addition to a general interest in addressing this issue, the State Board appears to have a specific responsibility for understanding the allocation of water rights related to the implementation of the interim and final remedy. In the Proposed State Board Settlement, the State Board is agreeing to withdraw all actions against the parties responsible for the contamination, and it adopts by reference the Consent Decree, which was lodged in United States District Court, Central District of California, signed by the US EPA, the Cities of Rialto and Colton, the County of San Bernardino and several other responsible parties. By agreeing to withdraw all actions against the parties to the Consent Decree, the State Board is in effect making itself bound by the terms of the Consent Decree. It is therefore imperative that the State Board fully understand whether there has been a proper allocation of water rights for the implementation of the interim remedy.

In addition, in its November 13, 2012 letter regarding the proposed settlement, the State Board's counsel, Michael Lauffer, states that the proposed resolution would specifically authorize the Chief Deputy Director of the State Water Board to, among other things, *approve or negotiate* agreements that relate to the "interim and final remedies that will be implemented and funded." It seems the State Board's counsel understands that this is the opportunity for the Chief Deputy Director to carefully review all issues related to the US EPA's proposed remedies for the region.

The allocation of water rights for these proposed remedies is one of the main issues related to a successful implementation of these remedies. The State Board should take this opportunity and address this issue directly with the US EPA and other related parties.

D. CONCLUSION

As stated above, the District fully supports a resolution of the litigation and administrative proceedings relating to the perchlorate contamination in the Rialto/Colton Basin. However, the allocation of water rights for the implementation of the US EPA's interim and final remedy must be carefully reviewed before such agreements are finalized. The citizens and affected water agencies in the Rialto/Colton Basin would benefit greatly from the State Board's careful review of the allocation of the water rights for the proposed interim and final remedies of the Rialto/Colton Basin. Once these agreements are executed, the opportunity to review this issue will be lost.

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This is a pivotal moment for the State Board in these proceedings and the State Board has the power to ensure the cleanup is accomplished in a timely fashion. The District stands by ready to assist and provide additional information as necessary.

Very truly yours,

K. Ryan Hiete

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